Regulatory Review and Reform (r3) Top 10 Rules, 2008*

Update Air Monitoring Rules for Dry Cleaners to Reflect Current Technology

Agency	Environmental Protection Agency (EPA)
Submitter	Small Business Environmental Assistance Program / Small Business Ombudsman (SBEAP / SBO) National Steering Committee
Description	The Clean Air Act's New Source Performance Standard (NSPS) for petroleum dry cleaners, 40 CFR §60.624, requires operators to perform an initial test to verify that the dry cleaning machine is operating properly. Additionally, Clean Air Act rules governing perchloroethylene (perc) dry cleaners, 40 CFR §63.321, require operators to use a halogenated hydrocarbon detector capable of detecting concentrations of perc of 25 parts per million (ppm) or greater to perform weekly inspections of their dry cleaning equipment.
Small entities affected	Virtually all of the 28,000 dry cleaners in the United States are small businesses.
Regulatory burden	The required NSPS testing method was developed before the modern closed-loop dry cleaning technology became widespread. The testing method requires an operator to open the machine to sample the emissions. However, most modern machines are closed-loop machines that will automatically shut down if any of the components are disconnected. Dry cleaners cannot conduct the required test in the manner specified by the rule. Similarly, halogenated hydrocarbon detectors typically measure ounces of refrigerant rather than ppm and most are not calibrated to detect perc at concentrations down to 25 ppm. Dry cleaners using these detectors therefore cannot meet the 25 ppm sensitivity requirement.
Proposed burden reduction	EPA should (1) update the outdated NSPS testing methods to reflect current equipment that is in use in the modern dry cleaning industry, (2) clarify in 40 CFR §63.321 that hydrocarbon detectors for perc are not required to have a sensitivity down to 25 ppm.
Small entity benefits	When outdated or inaccurate testing methods are revised, dry cleaners will have a method for demonstrating compliance that fits the modern equipment they use.
Advocacy contact	Keith Holman, **advocacy@sba.gov**

*Alphabetical by agency

Flexibility for Community Drinking Water Systems

Agency	Environmental Protection Agency (EPA)
Submitter	National Rural Water Association
Description	The 1996 Amendments to the Safe Drinking Water Act established a process to allow small drinking water systems that cannot meet EPA's national drinking water standards to meet an alternative standard. Under 40 CFR§142.303(a) and (b), the drinking water system must demonstrate that the alternative standard is protective of human health and is necessary to avoid financial hardship for the community where the system is located, and that the state regulatory agency agrees with the alternative standard. EPA considers a community's ability to pay when it determines how much a small system must spend to meet the national standards.
Small entities affected	Tens of thousands of small, often rural communities with limited resources to install and operate the treatment equipment.
Regulatory burden	No small drinking water system has ever qualified to obtain an affordability variance. Small systems are currently required to spend up to $500 per household to meet the national standards, a severe strain in many localities. These communities may also be forced to spend large sums of money to address trace contaminants, such as iron, that have very little potential for serious health impacts.
Proposed burden reduction	EPA should consider alternative methods for determining affordability, including using different percentages of median household income in the community. If a system's cost exceeds a community's ability to pay, the standard would be deemed "unaffordable," and the system could qualify for a variance if the state approves and the alternative standard remains protective of human health.
Small entity benefits	Small, rural communities would have greater flexibility to commit resources toward the issues of greatest importance to the community.
Advocacy contact	Kevin Bromberg, **advocacy@sba.gov**

Simplify the Rules for Recycling Solid Waste

Agency	Environmental Protection Agency (EPA)
Submitter	iSi Environmental Services, Synthetic Organic Chemical Manufacturers Association, National Paint and Coatings Association
Description	Current hazardous waste management regulations, 40 CFR Parts 260 and 265, govern facilities that store, treat, or dispose of hazardous wastes. Currently many useful materials that could otherwise be reused are required to be handled, transported, and disposed of as hazardous wastes.
Small entities affected	Hundreds of thousands of businesses, primarily in manufacturing, are subject to the hazardous waste standards. Many of these facilities are engaged in recycling hazardous wastes, including solvents recovery.
Regulatory burden	The hazardous waste standards are far more stringent, complex, and costly than those required for materials being recovered for reuse.
Proposed burden reduction	EPA is now considering less stringent standards for materials being recycled, including solvents that are recovered onsite. EPA should adopt a definition of solid waste that would eliminate certain forms of recycled materials from being considered "hazardous wastes," allowing them to be recycled more easily.
Small entity benefits	The approach will affect more than 20,000 facilities and will reduce costs, while still protecting the environment and encouraging recycling rather than the use of virgin materials.
Advocacy contact	Kevin Bromberg, **advocacy@sba.gov**

EPA Should Clearly Define "Oil" in its Oil Spill Rules

Agency	Environmental Protection Agency (EPA)
Submitter	American Chemistry Council (ACC), National Paint and Coatings Association (NPCA)
Description	The Spill Prevention, Control, and Countermeasure (SPCC) rules, 40 CFR, Part 112, govern the prevention and response requirements applicable to facilities that store oil where there is a potential threat of a release of oil to navigable waters.
Small entities affected	The SPCC rules affect hundreds of thousands of small businesses; a new definition of oil would affect the regulatory status of nonpetroleum oils and chemicals at more than 10,000 small firms.
Regulatory burden	The rule has been in place since 1973, and many facilities are unsure whether a given product is considered "oil" or not, and therefore whether the SPCC rules apply. In June 2007, ACC and NPCA requested that EPA provide some additional guidance as to the definition of oil to eliminate ambiguity in the current broad definition. The current definition relies on the creation of an "oil sheen" or discoloration on surface water—a very broad definition that relies on the judgment of the person making the observation and a variety of other factors. EPA has also moved away from the Coast Guard list of materials that are considered oil
Proposed burden reduction	The ACC urges the EPA to return to the 1975 decision tree procedure developed by the EPA's Office of Water, as well as the Coast Guard's list. This decision tree supported a distinction between materials thought to be oil generated at petroleum refineries, and agricultural product processing materials and chemicals created through processing in the chemical production and related industries. The Coast Guard approach relies on this decision tree procedure.
Small entity benefits	According to the nominator, more than 10,000 small facilities with products that are not petroleum-based oil could be relieved from the burdens of meeting the SPCC rules, which were designed to prevent oil spills.
Advocacy contact	Kevin Bromberg, **advocacy@sba.gov**

Update Flight Rules for the Washington, DC, Metropolitan Area

Agency	Federal Aviation Administration (FAA), U.S. Department of Transportation
Submitter	David Wartofsky, Potomac Airfield
Description	Following the events of September 11, 2001, the FAA issued an emergency rule establishing an air defense identification zone (ADIZ) for the region surrounding Washington, DC. The emergency rule imposed a 15-mile flight restricted zone (FRZ) and a 30-mile ADIZ emanating from Reagan National Airport. In 2005, the FAA proposed to make the emergency rule permanent (70 Fed. Reg. 45,250, August 4, 2005). The rule, if finalized, would impose flight operation requirements on aircraft operations within that area, including requirements that aircraft operators (1) file and activate a flight plan before entering (or re-entering) the restricted area; (2) maintain two-way radio communication with air traffic control; and (3) obtain and display a discrete transponder code while operating within the area. The FAA has concluded that while these restrictions are likely to cause considerable burdens to both air traffic control and the aviation sector within the affected area, they are needed for security reasons.
Small entities affected	Three small airports in the FRZ and a number of other airports in the ADIZ are significantly affected by these restrictions. Further, the restrictions have caused a significant economic impact on the region as a whole.
Regulatory burden	The FRZ and ADIZ have significantly restricted aviation within the Washington, DC, region, including limiting flights to and from the three small airports in the FRZ. It is likely that all three of these airports (and any aviation companies operating at the airports) will go out of business if the rules are finalized. The rule also affects some 150 other airports and numerous businesses operating in the ADIZ.
Proposed burden reduction	A review of the flight restriction rule could identify provisions that are unnecessary, inefficient, or outdated for affected small entities. The submitter has suggested a variety of alternatives, including an expandable FRZ that could be extended in a time of heightened security. By conducting a coordinated review of the rule, the FAA, the Department of Homeland Security, the Department of Defense, and the Secret Service would be able to determine whether the rule could be improved, while continuing to provide adequate security. A full analysis of both the security benefits and the economic impacts should be completed prior to finalizing any rule.
Small entity benefits	Review and potential revision of the flight restriction rule could help small entities have a more predictable use of aviation space and could enhance economic activity within the Washington, DC region.
Advocacy contact	Bruce Lundegren, **advocacy@sba.gov**

Eliminate Duplicative Financial Requirements for Architect-Engineering Services Firms in Government Contracting

Agency	Federal Acquisition Regulation Council (FAR Council)
Submitter	Council on Federal Procurement of Architectural and Engineering Services (COFPAES)
Description	The existing regulation, 48 CFR 52.232-10, provides for a 10 percent withholding or retainage of fees on firms providing fixed-price architectural-engineering services.
Small entities affected	Currently more than 230,000 small architectural and engineering (A&E) firms are in the federal procurement system.
Regulatory burden	The current provision is counter to the Brooks Act, which allows A&E firms and the procuring agency to meet to discuss the design and scope of services before bidding on the work. In some government contracts, the retainage is in addition to bonding requirements. Retainage restricts the cash flow of small businesses, with very little benefit to the government.
Proposed burden reduction	The FAR Council should consider removing this provision or reducing the percentage from 10 to 5, as it has done for other services.
Small entity benefits	A change in this regulation will help increase the cash flow of small A&E firms that contract with the federal government. This change should also encourage more firms to enter the federal procurement market, with concomitant improvements in the quality of services.
Advocacy contact	Major Clark**, advocacy@sba.gov**

Simplify the Home Office Business Deduction

Agency	Internal Revenue Service (IRS), U.S. Department of the Treasury
Submitter	National Association for the Self-Employed (NASE) and Eric Blackledge, Blackledge Furniture
Description	Internal Revenue Code section 280A(c)(1) permits a deduction for a home office if it is the principal place of business of the taxpayer, used exclusively for business, or used to meet with patients, clients, or customers. However, current IRS regulations do not provide a concise definition of the elements of section 280A(c)(1). In the absence of final regulations describing how to qualify for and calculate the deduction, IRS policies and case law have made it more complicated for a home-based business owner to learn how to obtain the exemption.
Small entities affected	Home-based businesses constitute 53 percent of all small businesses.
Regulatory burden	The requirements to qualify for and calculate the deduction are confusing for taxpayers and do not account for changes in technology that affect the way business is conducted. Consequently, many at-home workers do not take advantage of the home office business deduction.
Proposed burden reduction	The IRS should revise the rules to permit a standard deduction for home-based businesses. Similar to the Form 1040 standard deduction, the home office business deduction should be optional. Taxpayers who wish to claim the home office deduction could choose to continue to follow the current home office deduction rules or they could choose the new standard deduction.
Small entity benefits	Home-based business owners would have a simplified, less burdensome way of taking advantage of the home office business deduction.
Advocacy contact	Dillon Taylor, **advocacy@sba.gov**

Update OSHA's Medical / Laboratory Worker Rule

Agency	Occupational Safety and Health Administration (OSHA), U.S. Department of Labor
Submitter	Scott George, Mid-America Dental and Hearing Center
Description	OSHA's Bloodborne Pathogens Standard, 29 CFR §1910.1030, is designed to protect workers from exposure to bloodborne pathogens (viruses and other microorganisms) such as hepatitis B virus (HBV), and hepatitis C virus (HCV). These exposures result primarily from needlestick and other sharps-related injuries as well as from other employee exposures to blood. The rule requires any employer with workers exposed to blood or other potentially infectious materials to implement an exposure control plan for the worksite. The plan must describe how an employer will use a combination of engineering and work practice controls; ensure the use of personal protective clothing and equipment; and provide training, medical surveillance, hepatitis B vaccinations, and signs and labels, among other provisions.
Small entities affected	The rule affects every small business health care office and lab.
Regulatory burden	The rule makes no provision for medical facilities where employees have very limited exposure to blood, such as dental labs. The submitter states that the risk of employee illness in many circumstances is extremely low and that compliance with the rule costs billions of dollars, needlessly driving up the cost of medical care.
Proposed burden reduction	The submitter would like the rule to be reviewed and the requirements "tiered" to be more flexible depending on the amount of blood and bodily fluids present at the facility. The submitter believes the current rule is more appropriate for facilities that deal with larger amounts of blood and bodily fluids, such as trauma centers, but not for some small health care facilities.
Small entity benefits	The submitter believes the review and potential revision would result in cost savings to small health care facilities and would lower health care costs overall.
Advocacy contact	Bruce Lundegren, **advocacy@sba.gov**

Update Reverse Auction Techniques for Online Procurement of Commercial Items

Agency	Office of Federal Procurement Policy (OFPP), Office of Management and Budget
Submitter	Fairness in Procurement Alliance
Description	In the federal government's procurement system, the live electronic reverse auction technique was designed as a contracting tool to provide contracting officers with flexibility to make contract awards in a timely manner. Bidders who use the technique submit their bids through an online intermediary and are informed of competitors' prices but not their identity. Bidders offer successively lower prices until no lower price is offered. The agency must then decide whether it will make the award. Some current techniques used by contracting officers may have the unintended result of circumventing Federal Acquisition Regulation (FAR) Part 19, which requires agencies to set aside certain dollar threshold contracts for small businesses. The problem exists because no specific FAR regulation instructs contracting officers in how to use the reverse auction tool.
Small entities affected	All federal small business prime contractors are affected by this process.
Regulatory burden	Small business prime contractors are being subjected to acquisitions processes that may vary from agency to agency. This variability may impose unnecessary costs to compete on small business prime contractors.
Proposed burden reduction	The OFPP should review the reverse auction technique and consider structuring a federal government-wide rule that continues to provide the contracting officer with the flexibility embedded in reverse auctions while not conflicting with the well established FAR Part 19, which lays out small business competition requirements.
Small entity benefits	A well-defined regulation for reverse auctions will provide the small business federal contractor the business template necessary to measure the "cost to compete burdens and benefits" associated with contract bidding.
Advocacy contact	Major Clark, **advocacy@sba.gov**